IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.779 of 1990
Date of Decision: September 20, 2006

Bhim Singh son of Shri Mai Ram, resident of Urban Estate Jind Kothi No.1641, Urban Estate, near Water Tank Jind.

.....Appellant

VERSUS

1.Sukhbir Singh son of Chhaju Ram caste Jat resident of Garhwali Tehsil Jind, driver of Auto Rickshaw No.HYT-1624.
2.United India Insurance Company, Hisar.
3.Krishan Kumar son of Mehar Chand resident of Maheshwar Market Hisar, owner of the auto-rickshaw No.HYT-1624

.....Respondents

BEFORE:- HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.SD Bansal,Advocate
for the appellant.

Mr.NK Khosla,Advocate
for the respondents.

R S MADAN, J.

This is the claimant's appeal filed against the dismissal of his claim petition by the Motor Accident Claims Tribunal, Jind vide order dated 7-8-1990 for the grant of compensation of Rs.10000/- in respect of injuries suffered by him in the accident as well as damage caused to his Motor Cycle No.HRV-1208.

In brief the facts of the case are that on 17-10-1988, the

appellant-Bhim Singh was going to his home in Urban Estate, Jind on his motor-cycle bearing No.HRV-1208 at about 8.00 P.M. after selling his milk and when he was crossing Pindara Chowk on Jind-Gohana Road near Rani Talab, one auto rickshaw No.HYT-1624 driven by Sukhbir Singh-respondent No.1 in a rash and negligent manner, came from the opposite direction i.e. from general bus stand Jind and the said auto rickshaw collided against the motor-cycle of the petitioner. At the relevant time, the claimant-appellant was going on the correct side of the road whereas auto rickshaw has caused the accident by coming from the wrong side. In order to avoid the accident, the appellant took his motor-cycle on Kacha portion of the road but the accident could not be avoided. Due to the impact, the appellant fell down on the ground and sustained multiple injuries on his right leg and on back side and his motor-cycle was completely damaged and the empty milk drums were also broken or damaged. After causing the accident, Sukhbir Singh, the driver of the auto rickshaw slipped away from the spot leaving behind his auto rickshaw. The injured-appellant was removed by Ram Mehar and Raju to the General Hospital, Jind for treatment. He was admitted in the hospital where he was medico legally examined. A case FIR No.289 was registered in the police Station on that very day against respondent No.1 under Sections 337 and 427 of the Indian Penal Code. The claimant disclosed that on the date of accident his monthly income was Rs.1200/- and he had spent Rs.500/- on his treatment. He could not attend to his business of selling milk for ten days. He had to spend a sum of Rs.2833.18 on the repair of his motor-cycle and he had to purchase new drums for a sum of Rs.345/-. In this way, he claimed a compensation of Rs.10,000/-.

It is further the case of the claimant that respondent No.2 is the Insurance Company with whom the auto rickshaw was got insured and respondent No.3-Krishan Kumar was impleaded as a party later on because his name continued to exist in the Registration Certificate as owner of the auto rickshaw though that had been sold by him to Sukhbir Singh-respondent No.1, driver.

Upon notice, respondent No.1-Sukhbir Singh filed his written statement. It was pleaded by him that the motor-cycle was being used for a purpose other than riding so the petitioner was not entitled to any compensation. The driver, owner and insurer of the motor-cycle had not been impleaded as a party to the petition so the petition is bad for mis-joinder and non-joinder of the necessary party. The appellant-claimant himself is responsible for causing this accident, therefore, he is not entitled to any compensation.

On merits, it is pleaded that the appellant was coming on the motor-cycle with three milk drums at a very fast speed from the side of old courts and took a hasty turn near the police traffic Island(round about) from wrong side and on seeing the auto rickshaw coming from the opposite direction, he lost control over his motor-cycle and collided his motor-cycle against the auto rickshaw. The appellant was required to take full turn around the police traffic Island, which he did not do and in his attempt to make a short-cut, he himself caused the accident resulting injuries to him.

Respondent No.2-United India Insurance Company in its written statement took objections that neither the driver of auto rickshaw was having valid driving licence nor any insurance policy has been issued in his name. The claim petition is bad for non-joinder of owner, driver and

insurance company of the motor-cycle. The appellant was not holding any valid driving licence. Neither the motor-cycle nor auto rickshaw had a fitness certificate on the date of alleged accident. The accident had taken place due to rash and negligent driving of the petitioner himself. The motor-cycle was not being used for a purpose for which it was meant for i.e. was being used for transporting the milk instead of riding. Moreover, the auto rickshaw was already transferred in favour of respondent No.1 before the date of accident. Therefore, respondents No.1 and 3 had colluded with each other to fasten liability on the insurance company. It was pleaded that the respondent-insurance company is not liable to pay any compensation amount to the appellant because the accident in question took place due to carelessness and negligence of the appellant himself.

Respondent No.3, who filed a separate written statement expressing the ignorance about the accident, pleaded that prior to the date of accident, he had sold the auto rickshaw to Sukhbir Singh though the Registration Certificate continue to remain in his name because the bank loan was not cleared.

On the pleadings of the parties, the following issues were framed:

> *"1.Whether accident took place on account of negligence of respondent No.1? OPP*
> *2.Whether petitioner is not entitled for any compensation in view of preliminary objections No.1 and 3 in the written statement of respondent No.1? OPR*
> *3.Whether petition is bad on account of non-joinder of owner and insurer of motor-cycle?OPP*

4.Whether petitioner is not entitled for any compensation from insurance company in view of preliminary objections No.1,2,4,5,6 and 7 in the written statement of insurance company? OPP-2

5.Whether petitioner received any injury and is entitled for any compensation, if so how much? OPP

6.Whether any damage was caused to the motor-cycle of the petitioner, if so how much compensation the petitioner is entitled on that account? OPP

6-A.What is effect of Krishan Kumar respondent No.3, being entered as owner in the registration certificate of auto rickshaw HYT-1624 on the day of accident?

7.Relief."

Both the parties adduced evidence in support of their contentions raised in the pleadings.

On re-appraisal of the evidence brought on the record, the Tribunal returned the findings on Issue No.1 against the appellant-petitioner by observing that the accident in question took place due to carelessness and negligence of the appellant/claimant.

While disposing of issues No.2 and 3, it was held that before the claim is to be accepted, the owner, driver and insurance company of the motor-cycle were necessary parties to the petition. Therefore, the findings on issues No.2 and 3 were returned against the appellant-petitioner to the effect that he is not entitled to any compensation from the respondents.

On the findings of issue No.4 and 6A, it was observed that these issues are decided against the insurance company to the effect that it cannot avoid its liability to pay compensation to the petitioner, if any case for such compensation be made out, simply on account of transfer of auto rickshaw by its registered owner Krishan Kumar to Sukhbir Singh and since Krishan Kumar is also a party to the proceedings, so its liability is also co-extensive with that of insurance company.

The findings of issue No.5 and 6 were also decided against the claimant.

On the analysis of the findings on various issues, the claim petition of the appellant was dismissed.

I have heard the learned counsel for the parties.

Learned counsel for the appellant contended that the Tribunal has committed an error in returning the finding on issue No.1 against the appellant by holding him guilty of causing the accident due to his rash and negligent driving. According to him, the appellant in his examination-in-chief has narrated the manner in which the accident took place as pleaded in the petition. In cross-examination, he stated that he had come from the side of Arjun Stadium but then he stated that he was taking a turn from the side of Bank of India, which is on the other side of crossing and not towards Arjun Stadium. Whatever be the position, it is not disputed that the petitioner made a short cut while taking a round of the round-about from the wrong side and whether he was coming from Bank of India side or from Arjun Stadium side. In other words, he was supposed to turn from left side of that round-about without going to the side of the Bank of India. Thus, from the statement of petitioner himself, it stands established that he

took a turn of the round-about from the wrong side and thereby he himself was held to be responsible for causing the accident resulting in injuries to him as well as damage to his motor-cycle. PW3-Ram Mehar frankly conceded that he has not seen the occurrence. The other witnesses RW1-Sukhbir Singh and RW2-Satbir Singh have categorically stated that the petitioner took a turn from the wrong side of the round-about and caused the accident.

Thus, keeping in view the oral evidence brought on the record, no infirmity has been pointed out by the learned counsel for the appellant with respect to the findings recorded by the Tribunal on issue No.1, wherein, it was held that the appellant was responsible for causing this accident due to his rash and negligent driving. The findings on issues No.2 and 3 were not pressed before me, therefore, the findings recorded on these issues are hereby affirmed.

It is frankly conceded by the learned counsel for the respondent-Insurance Company that once it is accepted that the vehicle was transferred in favour of Sukhbir Singh by respondent No.3 and the possession thereof was handed over to Sukhbir Singh even if the registration continue to exist in the name of the original owner, it will not absolve the Insurance Company to pay the compensation.

It has been contended by the learned counsel for the appellant that the sale of the vehicle is governed by the provisions of Sale of Goods Act and stated that transfer of the vehicle is complete upon payment of consideration and the delivery of the vehicle, irrespective of the fact whether it has been registered or not. Reference was made to **Balwant Singh** Vs. **Jhanubai and others** 1980 ACJ 126 wherein the High Court of

Madhya Pradesh at Indore has dealt with this question in paras No.9, 10, 11 and 12 of the judgment. In para No.11 of the judgment, it has been observed as under:-

> *"It has further been held by this decision that registration certificate is a very important piece of evidence to show the ownership of the vehicle for certain purposes. However, failure to do so, cannot be deemed to militate against the validity and legality of the passing of the title in the vehicle so transferred or to expose the innocent seller who may have done his all to complete the transfer to legal liabilities for acts and omissions in respect to the vehicle subsequent to the transfer. Moreover, the certificate of registration is not a document of title, it is issued to the owner of the vehicle, that is the person by whom the vehicle is kept and used and although provision made for changes of ownership to be recorded in the book the name appearing in it may not be that of the legal owner of the vehicle, the registration book is evidence of title and its absence at the time of sale should put a purchaser on inquiry."*

Reference was also made to the Full Bench judgment of Andhara Pradesh High Court reported as **Madineni Knodaiah and others** Vs. **Yaseem Fatima and others** 1986 ACJ 1, wherein paragraph No.35, it was observed as under:-

> *"On the first question we refer Sections 22 and 31 of the Motor Vehicles Act, 4 of 1939 (hereinafter called "the Act"). No doubt, those provisions enjoin both on the transferor and transferee to report the factum*

> *of transfer of the vehicle to the registering authority and the owner is required to register the vehicle. We are not persuaded to hold on a careful reading of the said provision that the transfer is incomplete till the registration is effected in favour of the purchaser. The transfer of vehicle is governed by the provisions of Sale of Goods Act. In the absence of any agreement to the contrary payment of price, and delivery of vehicle make the sale complete, and the title passes to the purchaser. The obligation to register the vehicle is for the purposes of controlling and regulating the movement of vehicles by the authorities under the Act and they do not stand in the way of passing title to the purchaser. This is the view taken by the Supreme Court in* ***Panna Lal*** *Vs.* ***Chand Mal****, 1980 ACJ 233 (SC) and hence it is unnecessary to go into further debate on this question and accordingly we reject this contention."*

In view of the observations made by the Full Bench of the Andhra Pradesh High Court as well as by the Hon'ble Apex Court in Panna Lal's case, I am of the view that the registration of the vehicle in the name of Krishan Kumar does not absolve the Insurance Company to pay compensation to the victim. Therefore, the findings recorded by the learned Tribunal is, hereby, affirmed.

PW-Dr.Satish Gupta, who medico legally examined the appellant on 17-10-1988, noticed the following injuries on his person i.e. lacerated wound, three abrasions and two abraded contusions. Similarly, as regards damage to the motor-cycle and the expenses on the purchase of new drums, the appellant has not come to the Court with clean hands. PW6-Sat

Bushan Gulati, who claims to have repaired the motor-cycle and to have replaced its chassis admitted in his cross-examination that chassis supplied to him did not bear any number. In other words, it is presumed that no chassis was replaced by this witness because if chassis once altered, it must bear its number to establish the identification of the vehicle. As regards purchase of drums worth Rs.345/- under receipt Ex.PD dated 19-10-1988, the petitioner has tried to prove this receipt through PW7 Kamal Vijay Jain. The receipt appears to be fictitious and bogus because PW4 appellant himself has stated that he purchased new drums 20 days after the accident whereas the receipt Ex.PD shows that the drums were purchased by Bhim Singh on 19-10-1988 i.e. two days after the accident. So, on account of this bogus receipt, the appellant was rightly held not entitled to any compensation with respect to the milk drums. The appellant having been held responsible for causing this accident due to his rash and negligent driving and further has not come to the Court with clean hands, the findings recorded by the Tribunal on issues No.5 and 6 do not call for any interference and the same are hereby affirmed.

For the reasons stated above, there is no force in this appeal and the same is hereby dismissed with no order as to costs.

(R S MADAN)
JUDGE

September 20, 2006
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